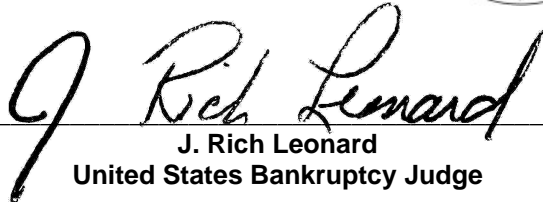




SO ORDERED.

SIGNED this 05 day of February, 2009.


J. Rich Leonard
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION**

IN RE:

**EDWARD RAYMOND GOUGH and
CARLEEN RENEE GOUGH,**

Debtors.

**CASE NO. 08-07564-8-JRL
CHAPTER 7**

ORDER

This case is before the court on the debtors' motion to value collateral and avoid the lien of Beneficial. On February 3, 2009, the court held a hearing on this matter in New Bern, North Carolina.

The debtors filed for relief under Chapter 7 of the Bankruptcy Code on October 30, 2008. The debtors reside at 5680 W.W. Gaskins Road, Ayden, North Carolina. Wells Fargo holds a first lien on the debtors' residence in the amount of approximately \$93,568.00. Beneficial has a second lien on the debtors' residence in the amount of \$18,168.00. The debtors contend that the fair market value of their real property is less than the amount of the first lien and request that the court strip off Beneficial's second lien as a wholly unsecured claim.

The Bankruptcy Code provides for the avoidance of liens "to the extent that a lien secures

a claim against the debtor that is not an allowed secured claim.” 11 U.S.C. § 506(d). However, the Supreme Court has held that a debtor in a Chapter 7 case may not strip down a creditor’s allowed claim that is partially secured by a lien on the debtor’s real property. Dewsnup v. Timm, 502 U.S. 410, 417, 112 S. Ct. 773, 778 (1992). The Fourth Circuit has applied the Supreme Court’s reasoning in Dewsnup and held that a Chapter 7 debtor is similarly precluded from stripping off an allowed but wholly unsecured junior lien on the debtor’s real property. Ryan v. Homecomings Fin. Network, 253 F.3d 778, 783 (4th Cir. 2001). It follows that the debtors in the case at bar are precluded from avoiding the junior lien of Beneficial so long as they remain in Chapter 7.

Based on the foregoing, the debtors’ motion to value collateral and avoid the lien of Beneficial is DENIED.

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